

When the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, the gross receipts are not subject to tax. See subsection (b) of 86 Ill. Adm. Code 130.605. (This is a GIL).

June 6, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 10, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please accept this writing as our request for a private letter ruling relative to our sale of two (2) Packaged Generator Sets to COMPANY of CITY/STATE.

On September 29, 1999 and October 28, 1999 resepctively, we processed our invoices for the sale of two (2) Packaged Generator Sets and imposed Retailers' Occupation Tax on these transactions. Our customer has not made payment to us of the taxes imposed as of this writing and recently asserted their position that Retailers' Occupation Tax is not owed pursuant to case law involving Union Electric Co. v Department of Revenue, excerpt attached, and associated documentation supporting their Interstate Commerce Exemption.

Given the complexity of the issues involved, we felt that a private letter ruling was appropriate and look forward to a timely response.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See the enclosed copy of 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase.

June 6, 2000

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if the sale is at retail. However, when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, the gross receipts are not subject to tax. See subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.605. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State, transports or sends the property out of this State for use outside the State or for use in the conduct of interstate commerce. See 86 Ill. Adm. Code 130.605(a)(2). Please note that it doesn't matter if the purchaser arranges for or even pays for the common carrier to pick up goods. The person listed as consignor on the bill of lading is what determines taxability. If the consignor is the seller then the exemption applies. If the purchaser is the consignor, the exemption does not apply. These principles should be applied to your situation.

For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. In order to document the exemption, the seller should obtain a statement from the purchaser that the property will be used exclusively outside the United States and a shipping document showing delivery of physical possession of the property to a freight forwarder in Illinois. The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.